IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 165 of 2007

with
CIVIL APPLICATION No.6326 of 2007
in
APPEAL FROM ORDER No. 165 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHARDABEN D/O KAANJI GOKULJI - Appellant(s)
Versus
DIWALIBEN SD/O KANAJI GOKULJI & 3 - Respondent(s)

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Appearance :
MR MC BHATT for Appellant(s) : 1,
MR AJ PATEL for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 08/05/2007

ORAL JUDGMENT

The appellant-original plaintiff is before this Court being aggrieved by order passed below Notice of Motion, Exhibit 6/7 and Exhibit 18 in Civil Suit No.1784 of 2006 by the learned Chamber Judge, Court No.13 of the City Civil Court, Ahmedabad.

2. The learned Judge was pleased to dismiss the Notice of Motion and reject Exh.18 application.

3. Learned advocate Mr.M.C. Bhatt vehemently submitted that the order is not in accordance with law and in dismissing the Notice of Motion and rejecting the application, Exh.18 injustice has been done to the plaintiff-present appellant. The facts of the case are narrated in the order and the same are reproduced for ready perusal:

> “The present suit has been filed for the declaration of documents executed and entries made as null and void on the ground that the plaintiff is having her share in the property left behind her deceased father for which different sale deeds have been

executed and revenue entries are effected to. .. ..”

4. The sale deeds which are referred to hereinabove are referred to in the order also.

The first in point of time is the sale deed executed on 21.06.1965 by Diwaliben, widow of Kanaji Gokulji and Hiraben, daughter of Kanaji Gokulji, for land bearing Survey No.1296/1 (suit land) in favour of Pravinchandra Mafatlal. It is also important to note that on the very day, i.e. 21.06.1965, a registered partition deed was executed wherein the first party was Diwaliben, Widow of Kanaji Gokulji, who is defendant no.1 in the present suit and Hiraben, daughter of Kanaji Gokulji, who is not joined as party either as plaintiff or defendant, whereas second party was minor Shakri, daughter of Kanaji Gokulji (8 years), who is defendant no.2; and minor Sharda, daughter of Kanaji Gokulji (5 years), who is the plaintiff. It is after the execution of this partition deed that the first sale deed was executed.

The second sale deed which is also a registered sale deed is dated 08.11.1966. It is executed by Pravin Mafatlal Shah in favour of one Mohanji Ataji Thakor. The things then proceed further and there comes the third sale deed, which is again a registered sale deed. It is executed by Mohanji Ataji to Ataji Galaji on 26.08.1969. The same land is then sold by registered sale deed which is the fourth in sequence. This registered sale deed is executed by Ataji Galaji in favour of one Lilaji Juhaji Thakor on 23.03.1971.

After this fourth sale deed, the **fifth** sale deed is executed in favour of present opponent no.3, i.e. New Gokulnagar Cooperative Housing Society Limited on 11.03.1992.

It is required to be noted that in the plaint the first sale deed of the year 1965 is referred to and it is alleged that the sale deed was executed with a purpose to destroy 'the ownership right' of the plaintiff as well as 'the right which she derived as legal heir of deceased-Kanaji Gokulji'. It is a very far fetched claim. To allege that in the year 1965

the real mother of the plaintiff executed a registered sale deed in favour of one Pravinchandra Mafatlal with a view to destroy the rights of the plaintiff is something which cannot be accepted so easily. It is easy to allege anything, more so BY attributing 'ill motives', for deriving monetary benefit even against one's own mother.

The Court cannot be unmindful of the real purpose behind such allegations.

Interestingly after referring to 1965 sale deed, the plaintiff has not referred to the intermittent sale deeds for the reasons best known to the plaintiff after the first sale deed, the fifth sale deed is referred to in para 5 of the plaint, which is dated 11.03.1992 in favour of present respondent no.3.

5. Another important aspect of the matter is, in the suit what is prayed is, 'a declaration that in the land in question bearing Survey No.1296/1 of Village Vejalpur Taluka/ City, admeasuring 35 gunthas, i.e. equal to 3541 sq. mtrs plaintiff is

having an equal share as daughter of deceased Kanaji Gokulji as the land was ancestral property.'

6. Next it is prayed that, 'the revenue entries made in the revenue record being Nos.1930, 1931, 2190, 1353 and 1354 and registered sale deed dated 11.03.1992, which is executed in favour of respondent no.3 herein and the revenue entry as consequence thereof being entry no.5061 dated 21.03.1992 and '*Ferfar*' entry no.6411 made in 'Gam Namuna No.6 be declared as incorrect and void ab initio'. Besides it is prayed in the said para that, '*Sammati Lekh*' dated 31.08.2005 be declared to be a concocted one, which is registered at entry no.5265 in the Office of the Sub Registrar, Ahmedabad (No.IV, Paldi).

The conclusion which can be drawn from the aforesaid prayers is that the plaintiff is not bothered about the intermittent sale deeds executed after first sale deed and prior to the fifth sale deed. In light of that the learned Judge having taken into consideration all the pros and cons of the matter has passed the order and refused to grant injunction as

prayed for.

7. At this juncture, taking into consideration the case pleaded by the plaintiff that the interest of a minor who at the relevant time, i.e. 1965 was five years is involved and there is some chance, may be remote one, of the plaintiff succeeding in the suit and her interest may not be adversely affected and with a view to see that she is not required to undergo the agony of prolonged litigation it is deemed fit that respondent no.3 be put to some condition. The respondent no.3 is directed to deposit a sum of Rs.75 lakhs in the court below on or before 01.06.2007. Once that amount is deposited the court below shall deposit the same in an appropriate Fixed Deposit for a minimum term which may earn maximum interest, which may be for three years so as to fetch 9.5% interest.

8. The learned Judge is directed to give priority to the suit and decide the same as expeditiously as possible.

With these observations/ directions the Appeal From Order which is found without substance is dismissed.

CIVIL APPLICATION No.6326 of 2007

9. In view of the order passed in the Appeal From Order, no order on the Civil Application. The Civil Application is disposed of accordingly.

(RAVI R. TRIPATHI, J.)

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